

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	CC Docket No. 80-286
Jurisdictional Separations Reform)	
And Referral to the Federal-State)	DA 99-414
Joint Board)	

REPLY

The National Exchange Carrier Association, Inc. (NECA), National Rural Telecom Association (NRTA), National Telephone Cooperative Association (NTCA), and Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), (collectively referred to as "Telephone Associations") submit this reply to comments filed in response to the Federal Communications Commission's (FCC or Commission) *Public Notice*¹ regarding a December 21, 1998 *Report* by the State Members (State Members) of the Federal State Joint Board (Joint Board) on Separations.²

The Telephone Associations' comments agreed with the State Members that interim measures are needed to deal with distortions in separations results caused by Internet traffic.³ However, the Telephone Associations commented that the Commission should adopt an interim "freeze" mechanism rather than a three-year rolling average of separations usage factors, as proposed by the State Members.

¹ *Report Filed by State Members of Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, *Public Notice*, DA 99-414 (rel. Feb. 26, 1999) (*Public Notice*).

² *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *State Members' Report on Comprehensive Review of Separations* (fil. Dec. 21, 1998) (*Report*).

³ *See Id.* at 15. *See also* Telephone Associations' Comments at 1 (Mar. 30, 1999).

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AT&T argued against such an interim measure because “transition plans tend to remain in place and become the *de facto* rule.”⁴ But there is no reason to conclude that the interim mechanisms proposed in this proceeding will necessarily become permanent (although it is possible that some type of fixed-factor approach may eventually be adopted in the Commission's separations reform proceeding).

While MCI generally opposes adoption of an interim relief mechanism, it expresses a preference for the three-year rolling average proposal advanced by the State Members over the freeze mechanism advocated by LECs.⁵ As the Telephone Associations and other commenters pointed out, however, the three-year rolling average mechanism will increase administrative burdens and introduce more complexity into the separations process without necessarily solving the jurisdictional problems associated with dial-up Internet Service Provider (ISP) traffic.⁶ In addition, a three-year rolling average may still have the effect of creating a cost shift toward the local jurisdiction, placing upward pressure on local rates for costs that are associated with interstate telecommunications.⁷

As the Telephone Associations explain in their comments, an interim “freeze” mechanism would alleviate many of the concerns associated with the growth in Internet

⁴ AT&T Comments at 3 (Mar. 30, 1999).

⁵ See MCI Comments at 7 – 8 (Mar. 30, 1999) (“The three-year rolling average proposal offers some advantages over the ILECs’ freeze proposals. . . . However, if cost allocations would otherwise trend in the direction of one of the jurisdictions, the only effect of the moving average approach would be to introduce a lag into the separations process. . . .”)

⁶ See Comments of Ameritech at 8 - 10, Bell Atlantic at 3 - 4, GTE at 9, GVNW at 9 - 10, NECA at 5, SBC at 8 - 9, Smithville Telephone at 9, TDS at 3 - 4 and 11, and USTA at 2 - 3 and 10 - 11 (Mar. 30, 1999).

⁷ See JSI Comments at 3 (Mar. 30, 1999).

traffic. Unlike the three-year rolling average, such a mechanism will not introduce any new regulatory burdens or additional complexities into the separations process.

Some parties propose that Internet traffic be removed entirely from the development of usage based traffic factors.⁸ Western Alliance states that since Internet traffic will not generate access revenues or additional local service revenues, the usage should be removed from the calculation of allocation factors.⁹ The Telephone Associations agree that this alternate approach would result in more stable and consistent allocation factors, and, therefore, provide an alternative interim solution to problems associated with Internet traffic. Additionally, the exemption of Internet traffic from the jurisdictional allocation factor development would be consistent with the Commission's treatment of enhanced service provider traffic for access charge purposes.¹⁰

Conclusion

The Telephone Associations reiterate that an interim separations mechanism is necessary, pending further study of separations reform. The Commission and Joint Board should therefore consider adopting an interim "freeze" mechanism that will halt separations distortions resulting from changes in technology and network usage patterns. In the alternative, the Commission and Joint Board should adopt an interim ruling that Internet traffic be excluded from the development of usage based traffic allocation factors pending long term resolution of this issue.

⁸ *See, for example* Western Alliance Comments at 9 (Mar. 30, 1999).

⁹ *See* Western Alliance Comments at 2 (Mar. 30, 1999).

¹⁰ *See* JSI Comments at 6 (Mar. 30, 1999).

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